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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,749	03/25/2004	Brian Robert Prasky	POU920030065US1	7321
33558	7590	10/21/2008		
INTERNATIONAL BUSINESS MACHINES CORPORATION				
IPLAW DEPARTMENT				
2455 SOUTH ROAD - MS P386				
POUGHKEEPSIE, NY 12601				
EXAMINER				
FENNEMA, ROBERT E				
ART UNIT		PAPER NUMBER		
2183				
MAIL DATE		DELIVERY MODE		
10/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No. 10/809,749	Applicant(s) PRASKY ET AL.
Examiner ROBERT E. FENNEMA	Art Unit 2183

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8, 10-18, 20-28 and 30.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Applicant has argued on Pages 15-16 of the remarks that the Examiner has stated that the prior art "would have not only turned the fetching mechanism off, that action would have disabled the branch history table and the branch target buffer", and that the claimed subject matter does not operate like the prior art, because it does not stop fetching or decoding. First of all, Examiner notes that there is no recitation anywhere in the claim language to suggest such a thing, so there is nothing that prevents the claimed invention from stopping fetching and decoding. However, Examiner also notes that the Examiner said no such thing regarding the stopping of fetching, and Examiner can find absolutely record where he stated that the prior art would stop fetching, or anything even remotely related to such a statement that could possibly be interpreted as such. Therefore, Examiner is not persuaded by the Applicant's arguments, as they not only do not appear to be represented in the claims, but appear to be based on a statement by the Examiner which is not present on the record.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Eddie P Chan/

Supervisory Patent Examiner, Art Unit 2183

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06)**Advisory Action Before the Filing of an Appeal Brief**

Part of Paper No. 20081010

Continuation of 3. NOTE: The amendments to the claim change the scope of the branch history table, by indicating that the branch history table now stores addresses, changing the scope of the claim. Furthermore, such amendments do not put the claims in condition for allowance, and do not reduce the issues for appeal, therefore it is not proper to enter the amendment. Additionally, Examiner notes that the current amendment to the specification appears to remove material from the background section of the disclosure, and move it into the summary of claimed subject matter. Since Applicant cannot remove any material from the background which is an actual disclosure of prior art, in order for this amendment to be proper, Applicant is required to show or explain why Paragraph 12 from the background was not a disclosure of prior art, as in the context of the specification, it appears that it could be.